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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,052	11/03/2003	Charles A. Byrne	MAMMOTH-44436	5529

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EXAMINER	
DANIELS, MATTHEW J	

ART UNIT	PAPER NUMBER
1791	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/701,052	BYRNE, CHARLES A.	
	Examiner	Art Unit	
	MATTHEW J. DANIELS	1791	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 September 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-5 and 7-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-5 and 7-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Prosecution Reopened

1. Prosecution on the merits of this application is reopened on claims 1, 3-5, and 7-27 considered unpatentable for the reasons indicated below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Rejections set forth previously under this section are withdrawn.

3. **Claims 1, 3-5, 9, 10, 12-16, 20, 21, and 25-27** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Oswald (USPN 4830781). **As to Claim 1**, Kraus teaches a method for manufacturing a tire (Fig. 2, item 24), which could be used as an animal chew toy, comprising the steps of:

providing first and second layers of rubber material formed in a general shape and size of the animal chew toy (2:20);

molding the sheets of rubber into an article which could be used as an animal chew toy (2:21-35);

wherein the molding step includes the steps of compressing the sheets of rubber between opposing mold members (11, 12, 20) under pressure (2:12-13) and heat (2:29-31).

Kraus does not explicitly teach the use of a floss material comprising a mesh molded between the two sheets.

However, Oswald teaches that it is conventional to mold a fiber mesh material between two sheets in a tire (Fig. 2, items 18, 14, 33, 26). The fiber mesh is inherently a mesh fabric sheet and would inherently act as a floss.

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Oswald into that of Kraus because Oswald teaches that the material would provide reinforcement to the tire and the many beneficial effects which such reinforcement would provide.

As to Claims 3 and 4, these claims read on the tire of Kraus (2:25, 2:51). **As to Claim 5**, see Oswald, 4:62-66. **As to Claims 9 and 10**, the inflatable bladder of Kraus (20), is inherently a buoyant insert associated with the tire. **As to Claim 12**, it is submitted that Kraus provides various chemical constituents (4:64-5:45) which would inherently have scents. **As to Claim 13**, the tire of Kraus and Oswald does not include metal imbedded therein when the nylon or polyester material of Oswald is used (4:60-67). Although silent to the particular size tire now claimed, size of the resulting article is not generally a patentably distinguishing feature, and one of ordinary skill would have found it obvious to provide the claimed tire size for use on motorized scooters and bikes made for young children.

As to Claim 14, Kraus teaches a method for manufacturing a tire (Fig. 2, item 24), which could be used as an animal chew toy, comprising the steps of:

providing first (23) and second layers (24) of rubber material formed in a general shape and size of the animal chew toy (2:20);

molding the sheets of rubber into an article which could be used as an animal chew toy (2:21-35);

compressing the sheets of rubber between opposing mold members (11, 12, 20) under pressure (2:12-13) and heat (2:29-31) to mold the materials.

Kraus does not explicitly teach (a) the use of a floss material comprising a mesh molded between the two sheets, (b) "cut" tire rubber material and "cut" synthetic fiber mesh.

However, Oswald teaches that it is conventional to mold a fiber mesh material between two sheets in a tire (Fig. 2, items 18, 14, 33, 26). The fiber mesh is inherently a mesh fabric sheet and would inherently act as a floss. With regard to the "cut" state of the rubber and synthetic fiber, it is submitted that the woven mesh and rubber materials have a shape which is generally the same as a "cut" shape, and in the alternative, it would have been obvious to cut the mesh and rubber to fit the tire.

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Oswald into that of Kraus because Oswald teaches that the material would provide reinforcement to the tire and its many art-recognized beneficial effects.

As to Claim 15, this claim reads on the tire of Kraus (2:25, 2:51). **As to Claim 16**, see Oswald, 4:62-66. **As to Claim 20**, it is submitted that Kraus provides various chemical constituents (4:64-5:45) which would inherently have scents.

As to Claim 21, Kraus teaches a method for manufacturing a tire (Fig. 2, item 24), which could be used as an animal chew toy, comprising the steps of:

providing first (23) and second layers (24) of rubber material mixed with carbon black (2:51) formed in a general shape and size of the animal chew toy (2:20);

compressing the sheets of rubber between opposing mold members (11, 12, 20) under pressure (2:12-13) and heat (2:29-31) to mold the materials.

Kraus does not explicitly teach (a) the use of a floss material comprising a nylon or polyester mesh molded between the two sheets, (b) "cut" tire rubber material and "cut" synthetic fiber mesh.

However, Oswald teaches that it is conventional to mold a nylon or polyester (4:62-66) fiber mesh material between two sheets in a tire (Fig. 2, items 18, 14, 33, 26). The fiber mesh is inherently a mesh fabric sheet and would inherently act as a floss. With regard to the "cut" state of the rubber and synthetic fiber, it is submitted that the woven mesh and rubber materials have a shape which is generally the same as a "cut" shape, and in the alternative, it would have been obvious to cut the mesh and rubber to fit the tire.

It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Oswald into that of Kraus because Oswald teaches that the material would provide reinforcement to the tire and its many art-recognized beneficial effects.

As to Claim 25, it is submitted that Kraus provides various chemical constituents (4:64-5:45) which would inherently have scents. **As to Claims 26 and 27,** the combined tire of Kraus and Oswald would obviously have a generally U-shaped cross section, a tread design, spaced apart sidewalls extending inwardly, a centrally aligned aperture. When the nylon or polyester of Oswald are selected, the article is devoid of metal.

4. **Claims 7, 17, and 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Oswald (USPN 4830781), and further in view of Spross (USPN 1596071). Kraus and Oswald teach the subject matter of Claims 1, 14, and 21 above under 35 USC 103(a). **As to Claims 7, 17, and 22**, Kraus and Oswald are silent to the rope. However, it is conventional to tie a rope to a tire. This type of apparatus is used for swings, and is demonstrated at least by Spross (Figures and Page 1, line 55). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Spross into that of Kraus because Spross explicitly suggests the method for use with tires (Page 1, line 56).

5. **Claims 8, 18, and 23** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Oswald (USPN 4830781), and further in view of McClung III (USPN 5799616). Kraus and Oswald teach the subject matter of Claims 1, 14, and 21 above under 35 USC 103(a). **As to Claims 8, 18, and 23**, Kraus and Oswald are silent to a treat. However, both provide a U-shape having lips (the points on the top of the U). McClung III teaches that such a lip on a disc shaped body may be used to hold an animal treat (Fig. 15, items 214-216). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of McClung III into that of Kraus in view of Kraus' providing of a disc structure having a lip, and McClung III's suggestion that such a lip may be useful for holding a food item (9:3-19).

6. **Claims 9-11, 19, and 24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Oswald (USPN 4830781), and further in view of Eby (USPN 3728749). Kraus and Oswald teach the subject matter of Claims 1, 14, and 21 above under 35 USC 103(a). **As to Claims 9-11, 19, and 24**, Kraus and Oswald are silent to the buoyant foam insert. However, Eby teaches that it is conventional to provide foam in a tire for use as a tire float (entire document). It is submitted that it is inherent that the foam is closed cell in order that it provides a floating effect, according to Eby's requirement. Although Eby appears to disclose foaming in the tire, it would have also been obvious to rearrange the order of these process steps by prefabricating the insert and placing it in the tire to provide the same effect. It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Eby into that of Kraus and Oswald in order to provide a use for old tires in order to avoid disposal costs and architectural eyesores in the form of junkyards.

7. **Claims 9-11, 19, and 24** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Oswald (USPN 4830781), and further in view of Ogura (USPN 4098214). Kraus and Oswald teach the subject matter of Claims 1, 14, and 21 above under 35 USC 103(a). **As to Claims 9-11, 19, and 24**, Kraus and Oswald are silent to the buoyant foam insert. However, Ogura teaches that it is conventional to provide closed cell foam in a tire for use as a tire float (2:26). The porous material is packed into the tire (4:9-10). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Ogura into that of Kraus and Oswald in order to provide a use for old tires in order to avoid disposal costs and disposal in landfills.

8. **Claims 12, 20, and 25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus (USPN 2984281) in view of Oswald (USPN 4830781), and further in view of Hartnett (US 2002/0111412). Kraus and Oswald teach the subject matter of Claims 1, 14, and 21 above under 35 USC 103(a). **As to Claims 12, 20, and 25**, it is submitted that Kraus provides various chemical constituents (4:64-5:45) which would inherently have scents. In the alternative, however, Hartnett teaches that it is known to provide a odor masking agent, such as vanilla extract, to a mixture to be molded and vulcanized (Abstract). It would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Hartnett into that of Kraus because Hartnett specifically suggests the method for use with vulcanizable elastomer rubbers ([0016]), and doing so would improve the scent of the article of Kraus, which is comprised of a vulcanizable elastomeric rubber.

Response to Arguments

9. Applicant's arguments, see pages 10-26 of the Appeal Brief filed 20 September 2007 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Kraus and Oswald.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Providing of first and second lays of rubber material and molding the sheets together

by compression between opposing mold members under pressure and heat appears to be the conventional process for making tires. Other references which are believed to provide cumulative teachings over the Kraus reference include Mooney (USPN 2402430) and Castricum (USPN 2625980). It is conventional to replace metallic beads in tires with rubber. See Hahn (USPN 1406555), Fig. 1, item 11 and page 2, lines 24-34. Many cord materials are known to be used interchangeably. For example, Darrow (USPN 2703128) teaches equivalent, and therefore substitutable, materials which may be used as cord materials including nylon (4:7-10).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW J. DANIELS whose telephone number is (571)272-2450. The examiner can normally be reached on Monday - Friday, 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJD 1/5/08

MJD

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